

EXHIBIT

5

DAVID LEE MILLER

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
SHREVEPORT DIVISION

MAGNOLIA ISLAND PLANTATION, L.L.C., BARBARA MARIE CAREY LOLLAR	:	CIVIL ACTION NO. 5:18-cv-01526
	:	
VERSUS	:	DISTRICT JUDGE ELIZABETH FOOTE
	:	
LUCKY FAMILY, L.L.C., W.A. LUCKY, III, AND BOSSIER SHERIFF JULIAN C. WHITTINGTON, IN HIS OFFICIAL CAPACITY	:	MAGISTRATE JUDGE KAREN HAYES

DEPOSITION OF DAVID LEE MILLER
October 21, 2019

Reported By:
Jayne M. Reeves, CCR

DAVID LEE MILLER

10/21/2019

5

E X H I B I T S

NUMBER	DESCRIPTION	PAGE
EX. 1	Notice of Deposition	18
EX. 2	Writ of Fieri Facias BSO 001	19
EX. 3	Note regarding phone call dated 6/12/18 BSO 002	21
EX. 4	Promissory Note BSO 003	23
EX. 5	E-mail from Kim Flournoy to Curtis Shelton dated 9/6/18 BSO 013-014	28
EX. 6	E-mail from Kim Flournoy to Curtis Shelton dated 9/17/18 BSO 025	30
EX. 7	Letter from Kim Flournoy to J. Davis Powell dated 10/15/18 Magnolia Lollar 0477	32
EX. 8	E-mail from Curtis R. Shelton to Kim Flournoy dated 10/12/18 W.A. Lucky, III 43	33
EX. 9	Letter from Curtis R. Shelton to Patrick Lacour dated 10/10/18 Lacour 016-021	34
EX. 10	Appraisement Sheet Magnolia Lollar 0126	38
EX. 11	Appraisement Sheet Magnolia Lollar 0128-0129	39
EX. 12	Letter from Patrick Lacour to Julian C. Whittington dated 10/22/18 Magnolia Lollar 0132-0136	40

DAVID LEE MILLER

10/21/2019

7

1 DAVID LEE MILLER,
2 the witness, having been duly sworn, testified as
3 follows, to wit:

4 EXAMINATION

5 BY MR. POWELL:

6 Q. Chief Miller, my name is Davis Powell.
7 I'm with the law firm of Davidson Summers here in
8 Shreveport. I represent Ms. Barbara Lollar and
9 Magnolia Island Plantation in this matter.

10 Would you like me to refer to you as
11 Chief Miller? Would that be okay?

12 A. That's fine.

13 Q. Okay. If you would, for the record, go
14 ahead and give me your full name.

15 A. It's David L. Miller.

16 Q. And the L?

17 A. Lee.

18 Q. Your address?

19 A. 149 Lakewood Point Drive, Bossier City,
20 71111.

21 Q. And please identify your employer.

22 A. The Bossier Sheriff's Office.

23 Q. And what is your position with the
24 Bossier Sheriff's Office?

25 A. I'm assistant chief over Support

DAVID LEE MILLER

10/21/2019

8

1 Services.

2 Q. Okay. Describe your position for me.

3 A. Support Services entails everything
4 that is not criminal or corrections.

5 Q. Would that encompass civil matters?

6 A. Yes.

7 Q. How long have you held this position?

8 A. Assistant chief for three years.

9 Q. And prior to that, what was your
10 position?

11 A. Major.

12 Q. With the Bossier Parish Sheriff?

13 A. With the same. Yes.

14 Q. And how long did you hold that
15 position?

16 A. For three years. For three years.

17 Q. Okay. How long have you been with the
18 Bossier Parish Sheriff's Department?

19 A. 20 years.

20 Q. 20 years. How many different sheriffs?

21 A. This is my second one.

22 Q. During that time, was it generally over
23 civil matters or did it change -- did your
24 responsibilities change?

25 A. It was over civil.

DAVID LEE MILLER

10/21/2019

12

1 your next step?

2 A. Next step is to prepare the notice of
3 seizures, perfect service.

4 Q. What's the purpose of a notice of
5 seizure?

6 A. It's to give notice to all the parties.

7 Q. And when you say parties, what do you
8 mean?

9 A. It's whoever the foreclosing -- or the
10 attorney for the plaintiff, whoever they instruct
11 us to have served.

12 Q. So the sheriff's office doesn't make an
13 independent determination of who they should
14 provide notice to?

15 A. No.

16 Q. After you prepare the notice of seizure
17 and provide notice to the parties, as you stated,
18 what's the next step?

19 A. If we get service on all those parties,
20 then the next step is to set it for sale.

21 Q. When you say set it for sale, what --

22 A. Actually create a sale date in the
23 future.

24 Q. How do you choose the sale date?

25 A. They're predetermined. They're on

DAVID LEE MILLER

10/21/2019

34

1 Q. (BY MR. POWELL) This is Exhibit 8.
2 This is an October 12th e-mail from Mr. Curtis
3 Shelton to Ms. Flournoy. It is providing
4 information for Mr. Patrick Lacour, that
5 Mr. Shelton says that he is located.

6 Do you see that?

7 A. Yes.

8 Q. Did the sheriff's office contact
9 Mr. Lacour after receiving this e-mail?

10 A. I do not know.

11 Q. And who would know that?

12 A. Ms. Flournoy.

13 Q. Did anything in the file you reviewed
14 indicate that your office contacted Mr. Lacour at
15 this time?

16 A. I don't know.

17 Q. I'm saying in your review of the file,
18 do you recall anything indicating that you
19 contacted Mr. Lacour after receiving this
20 information here?

21 A. I don't recall any documentation in the
22 file.

23 (Miller Deposition Ex. 9 was
24 marked for identification.)

25 Q. (BY MR. POWELL) This is Exhibit 9.

DAVID LEE MILLER

10/21/2019

35

1 It's an October 10th letter from Mr. Shelton to
2 Mr. Lacour. Have you ever seen this letter?

3 A. I don't recall seeing it. No.

4 Q. So you didn't see it in the sheriff's
5 office file anywhere?

6 A. Not that I recall.

7 Q. This is a 6-page letter to Mr. Lacour
8 describing Mr. Lacour's undertaking of the third
9 appraisal. Did the sheriff's office instruct
10 Mr. Shelton to send this letter?

11 A. Not that I know of.

12 Q. Is it normal procedure for the judgment
13 creditor to provide this type of letter to the
14 third appraiser?

15 MS. PARKS: Objection to form.
16 You can answer it if you can.

17 A. I don't know.

18 Q. (BY MR. POWELL) who would know the
19 procedures for the sheriff's office in regards to
20 the third appraiser?

21 A. I don't understand the question.

22 Q. Exhibit 1 is a Notice of Deposition
23 that contains an Exhibit A to it. It's the
24 categories of topics that I'm going to discuss
25 with you that you had reviewed. And then you

DAVID LEE MILLER

10/21/2019

43

1 A. She was working in the civil office.

2 Q. Was it a learning experience for the
3 sheriff's office? This suit?

4 A. Yes.

5 Q. And why is that?

6 A. Because it was the first negotiable
7 instrument that we could remember having.

8 (Miller Deposition Ex. 14 was
9 marked for identification.)

10 Q. (BY MR. POWELL) This is Exhibit 14.
11 This is an Ex Parte Motion to Fix Appraisers'
12 Fees. Have you seen this document before?

13 A. Yes.

14 Q. And where did you see it?

15 A. I believe I received it from
16 Mr. Shelton for signature by the sheriff.

17 Q. So at the time, it was submitted to you
18 in the sheriff's office for signature of the
19 sheriff?

20 A. I'm sorry?

21 Q. In October of 2018, it was submitted to
22 you for the Sheriff's signature?

23 A. It may have come into the civil office,
24 and then they brought it to me; or maybe a runner
25 brought it to me. I'm not sure.

DAVID LEE MILLER

10/21/2019

60

1 or the plaintiff to name the appraiser or to
2 simply give your office recommendations?

3 A. Recommendations.

4 Q. Okay. And she said, If possible, could
5 you give the names of at least two so we are not
6 down to the wire trying to find one last minute.
7 Thanks, Kim.

8 She was asking for whatever help she
9 could get from the plaintiff as far as you're
10 concerned. Right?

11 A. Right.

12 Q. Is it unusual for the sheriff's
13 office -- whether it's this note, which might be
14 unusual, you know, atypical. But is it unusual
15 for the sheriff's office when it runs across
16 property, say oil and gas property or other
17 things that are unique, to ask the plaintiff's
18 lawyer, Do you know some appraisers that we might
19 consider?

20 A. No.

21 Q. Okay. So the sheriff's office does ask
22 for recommendations in other instances?

23 A. That's correct.

24 Q. And this sale is not unique in that
25 regard?

DAVID LEE MILLER

10/21/2019

61

1 A. No.

2 Q. And when Ms. Flournoy received the
3 suggestion that Mr. Lacour, you know, might be
4 able to appraise this property, she was free to
5 either accept that person or to reject that
6 person; is that right?

7 A. That's correct.

8 Q. Okay. Exhibit 7 that Mr. Powell showed
9 you was a letter to him from Ms. Flournoy.

10 And it said, Please be advised that the
11 above referenced suit is set for sale 10/24/2018.

12 Okay. And she wrote that letter on
13 October 15th, nine days before. Okay? And I
14 think Mr. Powell's question to you was focused on
15 the fact that she said in order to avoid any
16 delays, we need this appraisal ASAP. Do you
17 remember him asking you about that?

18 A. Yes, sir.

19 Q. Okay. Now, I'm going to tell you that
20 Revised Statute 13:4363 -- and it's quoted in
21 Exhibit 9 here -- reads: Not less than seven
22 days, exclusive of holidays, before the sale of
23 seized property, the sheriff shall serve written
24 notice on the debtor and on the seizing creditor,
25 in the manner provided for the service of a

DAVID LEE MILLER

10/21/2019

65

1 property is worth?

2 A. That's up to them.

3 Q. That's up to them?

4 A. That's up to them.

5 Q. That's why you have them?

6 A. That's why -- yeah.

7 Q. Otherwise, you would do it yourself?

8 A. Right.

9 Q. Okay. But you have them do it for that
10 purpose?

11 A. Uh-huh.

12 Q. And they can obtain that information
13 from any number of sources. Right?

14 A. Correct.

15 Q. They can obtain information -- just
16 like y'all's office calls the plaintiff's lawyer,
17 they're free to talk to the plaintiff's lawyer
18 and find out any facts from the plaintiff -- or
19 the plaintiff's counsel that they want to know
20 that they might deem relevant; is that correct?

21 A. That's correct.

22 Q. Okay. Now, Exhibit 9, the letter that
23 I wrote to Mr. Lacour dated October 10th, 2018.
24 All right. I'm going to read you some passages
25 from that. Okay?

DAVID LEE MILLER

10/21/2019

82

1 earlier -- okay. I'll move along.

2 Q. (BY MR. POWELL) You did say earlier
3 that the appraisers should do their job. Right?

4 A. That's right.

5 Q. That's what they're for, is you provide
6 them with certain information, but then they do
7 their job?

8 A. That's correct.

9 Q. Okay. Would it be -- would the
10 sheriff's office provide the appraiser -- would
11 it be the sheriff's office role to provide the
12 appraiser with other appraisals on the property?

13 A. No, sir.

14 Q. Okay. Would it be the sheriff's office
15 role to provide the appraiser with any opinion
16 the sheriff's office has about the value of the
17 property?

18 A. To the appraiser?

19 Q. Yes.

20 A. No.

21 Q. Okay. Would it be the sheriff's office
22 role to tell the appraiser what he should and
23 shouldn't consider in doing his appraisal?

24 A. No.

25 Q. Okay. And Mr. Shelton went through the

DAVID LEE MILLER

10/21/2019

83

1 October 10th, 2018, letter. He read some
2 passages from it. He would read the passage, and
3 he would say essentially do you agree with that
4 or do you disagree with that? And you would
5 answer. But I'm just solidifying your earlier
6 testimony. You never saw the letter until I
7 showed it to you with the exhibit. Correct?

8 MS. PARKS: Objection to form.
9 That's not what he testified about.

10 Q. (BY MR. POWELL) Okay. Had you seen
11 that letter --

12 MS. PARKS: What he testified to,
13 I mean. I'm sorry.

14 Q. (BY MR. POWELL) Had you seen that
15 letter before?

16 A. During the review of the file. Yes.

17 Q. You did see it during the review of the
18 file?

19 A. Yes.

20 Q. When did you review the file?

21 A. When I got this suit. This request.

22 Q. Within the last couple weeks?

23 A. Yeah.

24 MR. POWELL: All right. That's
25 all I have.